GOVERNMENT OF MYSORE.

(LABOUR DEPARTMENT).

Labour Dispute.—Industrial dispute between the Workmen and the Management of Lakshmi Talkies, St. Johns Road, Bangalore-1.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

1. Letter No. 981/62-63, dated the 2nd January 1963, from Sri R. Krishna Setty, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 31st day of December 1962.

Present :

Sri R. Krishna Setty, B.A., LL.B.,

Presiding Officer, Labour Court, Bangalore.

Reference No. 47 of 1962.

(In the matter of an Industrial Dispute between the Workmen and the Management of Lakshmi Talkies, St. John's Road, Bangalore-1).

Between—

Workmen represented by the Secretary, Mysore State Cinema Employees' Association, Subbanna Buildings, Subedar Chatram Road, Bangalore ... ... *I Party.*

and

The Management of Messrs. Lakshmi Talkies, St. John's Road, Bangalore-1 ... ... *II Party.*

[Reference Government Order No. PLM 438 LLD 62, dated 24th October 1962.]

AWARD.

1. An industrial dispute between the workmen and the management of Lakshmi Talkies, St. John's Road, Bangalore-1 was referred for adjudication to this Court by the Government of Mysore under Section 10(1) (c) of the Industrial Disputes Act, 1947 for adjudication by their Order No. PLM 438 LLD 62, dated 24th October 1962, the dispute having been raised by the Secretary,

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Mysore State Cinema Employees' Association, Subbanna Buildings, Subedar Chatram Road, Bangalore-1 and the point of dispute being :—

> "Whether the Management of Lakshmi Talkies, St. John's Road, Bangalore-1, is justified in terminating the services of Shri P. Seshagiri Rao, Booking Clerk of the theatre from 18th June 1962 ? If not, is he entitled for reinstatement with benefits of back wages or to any other relief ?"

2. It is alleged that the workman Sri P. Seshagiri Rao was a booking clerk in the second party talkies for about 8 years, that there was a change in the management of the theatre and therefore he was discharged and paid his service compensation for about 6 years and thereafter the new management allowed him to continue in the theatre and that after about 2½ years of unblemished record of service, the management refused to give him work on 18th June 1962 and subsequently, that the termination of his services was illegal in as much as no enquiry was held in regard to any alleged acts of his misconduct, that not even a charge-sheet had been served upon him and as such the management should be directed to reinstate him in his former post and pay him back wages.

3. In their rejoinder the second party management accused the workman Seshagiri Rao of selling tickets in black-market and therefore it amounted to a misconduct and as such his services were terminated with effect from 18th June 1962.

4. The second party management frankly and in a straight forward manner admitted that the whole enquiry into the alleged misconduct of the workman was conducted orally and the order of termination was also passed orally. For a long time there was no uniformity in the decisions of the Tribunals as regards the scope of the enquiry by an adjudicator in a dispute for reinstatement of a discharged or dismissed workman. For the first time the Full Bench of the Labour Appellate Tribunal of India in Buckingham and Carnatic Mills' case reported in 1951 (II) LLJ 314 discussed the different decisions of different tribunals fully and then held that the decision of the management to dismiss, discharge or terminate the services of a workman would not prevail in the following circumstances :—

(i) if there is want of *bona fides*, or

(ii) if it is a case of victimisation or unfair labour practice or violation of principles of natural justice, or

(iii) if there is a basic error on facts, or

(iv) if there has been a perverse finding on the materials.

The Supreme Court substantially has approved of this decision and in Indian Iron & Steel Co., Ltd., and another *Vs.* Their Workmen reported in 1958 (I) LLJ 260 and has observed as follows :—

> "In cases of dismissal on misconduct the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere :—
>
> (i) when there is a want of good faith,
>
> (ii) when there is victimisation or unfair labour practice,
>
> (iii) When the management has been guilty of a basic error or violation of a principle of natural justice, and
>
> (iv) when on the materials, the finding is completely baseless or perverse."

No where do we find that the management should make a record of the proceedings of the enquiry and also serve a copy of the written order of termination of his services on the workman. A spot enquiry and an oral order of dismissal cannot be said to be invalid in law. If an oral order of dismissal stands the tests laid down by the Supreme Court in Indian Iron & Steel Co., Ltd., and another *Vs.* Their Workmen, then it must be said that this court will have no jurisdiction to interfere with such an order. On the materials produced before the court by the concerned parties, if the court were to come to the conclusion that there was no want of good faith or when there is no victimisation or unfair labour practice or when the management is not guilty of a basic error or violation of a principle of natural justice or when on the materials the finding of the management was not completely baseless or perverse, the court has no other alternative than to uphold it and not interfere with it. The decision of the Supreme Court in Ritz Theatre (Private) Ltd., *Vs.* Its Workmen reported in (1962-63) 23 F. J. R. page 171 is in all fours with the present case. In that case two Workmen of Ritz cinema namely Jai Jai Ram and Mohd. Mia had been charge-sheeted for several offences. There were four charges against Jai Jai Ram. The first charge was that on 1st August 1958, he along with Mohd. Mia had given a beating with slaps and first blows while on duty to Mool Krishan Nigam another employee at about 6 P.M. during the matinee show of "Nau-sherwane-Adil"; the second charge was that he had

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misappropriated carbons belonging to the management, the third was that he had run Reel No. 9 of the picture "Bhabi" upside down on 19th August, 1958, during the 6-30 P.M. show; and the last charge was that he had run over the Film Print of picture "Mother India" and thereby damaged the film print. So far as Mohd. Mia was concerned three charges had been framed against him. The first was that he and Jai Jai Ram together had beat Mool Krishan Nigam, the second was that on 25th August, 1958, at about 3 P.M. during the show, he had threatened Ramesh Chandra another employee and had abused him and pushed him out of the cabin and the third was that on 23rd August, 1958, while on duty he had left his cabin for half an hour without leave or permission or even without giving any information and was found taking tea in the restaurant during duty hours. The Enquiry Officer appointed by the appellant company investigated into these charges. As many as eleven witnesses were examined on behalf of the appellant and an equal number on behalf of the workmen. The Enquiry Officer after considering the rival contentions came to the conclusion that the charges against both the workmen had been fully substantiated and therefore recommended to the concerned authority to dispense with their services for the misconducts. On this recommendation, both the workmen Jai Jai Ram and Mohd. Mia were dismissed on 15th January 1959 and 1st May 1959 respectively. The Tribunal to which a reference of that dispute had been made for adjudication recorded additional evidence at the request of both parties and thereafter reached the conclusion that the dismissal of Jai Jai Ram was not justified and that the findings recorded against him at the departmental enquiry were baseless. In regard to the termination of Mohd. Mia's services the Tribunal held that no order of dismissal had been served upon him and so it could not be said that his services had been duly terminated by the order of dismissal at all. Before their Lordships of the Supreme Court Mr. Andley dealing with the dispute on merits contended that the Tribunal had exceeded its jurisdiction. Their Lordships held as follows :—

> "It has been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the

dismissal of the employee for itself. *The same result follows if no enquiry has been held at all.* In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the Enquiry Officer are perverse, the whole issue is at large before the Tribunal. *This position also is well settled.*

In regard to cases falling under this last category of cases, it is, however, open to the employer to adduce additional evidence and satisfy the Tribunal that the dismissal of the employee concerned is justified. And in such a case, the Tribunal would give opportunity to the employer to lead such evidence, would give an opportunity to the employee to meet that evidence, *and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it. There can be little doubt even about this position.*"

In the instant case, as already stated, the management of the second party has not reduced into writing the proceedings of its spot enquiry. But the management has placed all those materials before this court now in support of its contention that the workman was dismissed on proved grounds of misconduct. The management examined three witnesses. M.W. 1 Achutan was a clerk in Vijaya Picture Circuit, Bangalore who had been sent to Lakshmi Talkies for purpose of supervising the work on its behalf. M.W. 2 B. N. Gupta is one of the partners of Lakshmi Talkies. M.W. 3 Tulsi was a representative of Sharada Movies in Lakshmi Talkies. In his evidence Sri Achutan stated that on 17th June 1962 at about 2-30 P.M. he went to the counter and found the workman Seshagiri Rao, W.W. 1 having removed 50 tickets of 80 nP. from the ticket book, folded and kept them in front of the counter. He also found him issuing the other tickets through the counter. Just then one Srinivasa, the Chief Operator of Lakshmi Talkies went there to purchase a ticket and also to know the exact time. He punched one ticket and just turned round to the right to hand over that ticket to him. In the meanwhile the workman Seshagiri Rao removed the folded bundle of 50 tickets and put it in his left trouser pocket. Naturally he suspected the workman. He noticed a portion of the bundle that was visible from inside the pocket. The workman Seshagiri Rao at once closed the counter and told the public that the house was

full and that no tickets were available. He then told Seshagiri Rao to take out those 50 tickets which he had secured in his trouser pocket and sell them to the public and warned him that if he did not do so he would report the matter to the authorities. So saying he caught hold of his trouser pocket as he wanted to pull out the unsold tickets. But the workman Seshagiri Rao would not allow him to do so and he abused him in filthy language. At once he locked the booking office and went out. He followed him wherever he went. In the meanwhile Tulsi the other representative of Messrs. Sharda Movies came there. He told him the whole story. Even Tulsi advised Seshagiri Rao to take out the tickets and sell them. All that was in vain. In the meanwhile the witness phoned to the Manager Sri Krishna. By that time Seshagiri Rao removed the bundle of tickets from his trousher pocket and handed over the same to an unknown black-marketeer. When Krishna the Manager came to the spot, he lodged a written complaint as per Ex. M. 1. M.W. 3 Tulsi corroborates this evidence in material particulars. He has sworn that he advised Seshagiri Rao to take out the tickets from his trouser pocket and sell them. He further stated that the workman Seshagiri Rao denied having concealed any tickets in his trouser pocket, but when he was asked to permit either him or Achutan to search his person, he would not allow them to do so. These witnesses have been cross-examined at great length. Nothing is suggested or indicated therein as to why M.W. 1 Achutan should falsely implicate the workman Seshagiri Rao in this offence. As a matter of fact the workman Seshagiri Rao himself in his chief-examination stated that on Sunday the 17th June 1962 at about 2-30 P M. he was issuing 80 nP. tickets in the second party theatre, that after he sold 80 or 90 tickets M.W. 1 Achutan entered in and stood by his side and two minutes later he went out and returned and in the interval he had sold out the rest of the tickets and so closed the door. He admits that Achutan told him that he must have some tickets with him still and that he should sell them to which he replied that he had none as he had sold out all the tickets. Thereupon Achutan told him that the unsold tickets were in his trouser pocket and that he should remove them. He told him that he had no tickets in his pocket, but had only a sum of Rs. 50 in it. Thereupon Achutan asked him to remove his trouser so that he might check. But he refused to permit him to remove the trouser and asked him to check the cash if necessary. If the workman Seshagiri Rao was is innocent as he represented to Achutan at that time, if he had not concealed any tickets in his trouser

pocket nothing prevented him from allowing himself to be searched either byAchutan or by anybody. Why should he hesitate to do so? Why should he have refused to allow anybody to search him? This immediate conduct of the warkman clearly shows that if he had permitted Achutan to search his person he would have been caught red-handed in having concealed the unsold tickets. This is the reasonable inference which an ordinary prudent man could draw in those circumstances. It is thus clear from the evidence on record that the two representatives who were working at that time in the theatre have sworn that the workman Seshagiri Rao refused to allow himself to be searched at the spot for the recovery of the concealed unsold tickets. As a matter of fact the workman himself admits that he did not permit either Achuthan or anybody to search him, but denied that he had concealed any tickets in his trouser pocket. This circumstantial evidence on record clearly warrants the conclusion that Sri Seshagiri Rao was guilty of misconduct and the management was perfectly justified in terminating his services.

5. For these reasons my finding on the point of dispute scheduled in the order of reference is against the first party union. The order of reference is liable to be rejected and is rejected accordingly. No costs.

Dictated, transcribed and corrected by me.

R. KRISHNA SETTY,

Presiding Officer,
Labour Court, Bangalore.

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APPENDIX.

List of witnesses examined in this case on behalf of—

I party:

W.W. 1 Sri Seshagiri Rao.

II party:

M.W. 1 Sri Achutan.
2 B. N. Gupta.
3 Sri Tulsi.

List of documents admitted in this case on behalf of—

I party:

Ex.W. 1 Letter calling to report for duty.
2 Copy of complaint given by M.W. 1.
3 Complainant given by M.W. 1 Union.

II party:

Ex. M. 1 Original Complaint by M.W. 1.
2 Complaint regarding allowing visitors without ticket.

R. KRISHNA SETTY,
Presiding Officer, Labour Court, Bangalore.

ORDER NO. PLM 438 LLD 62, DATED BANGALORE, 15TH JANUARY 1963.

WHEREAS by State Government Order No. PLM 438 LLD 62, dated 24th October 1962, the Industrial Dispute between the Workmen and the Management of Lakshmi Talkies, St. Johns Road, Bangalore-1, was referred to the Labour Court, Bangalore, for adjudication ;

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said industrial dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said Award as above in the *Mysore Gazette*.

By Order and in the name of the Governor of Mysore,

H. L. LINGARAJ URS,

961 *Dy. Secy. to Govt., P.H., L. and Ml. Admn. Dept.*